

REMARKS/ARGUMENTS

Claims 18, 19, 21-31, and 33-65 are pending in this application. Claims 23, 26-30, and 51-65 are withdrawn. Claims 18, 19, 21, 22, 24, 25, 31, and 33-50 stand rejected. By this response, claims 18 and 43 are amended.

Interview Summary

The Applicant thanks Examiner Bertram for his participation in an interview with Attorneys Jason Kraus and Elizabeth Cowan Wright on Tuesday, March 18, 2008 at 3:30 PM ET. The Examiner indicated that amending claim 1 to clarify that it is the distal end of the tension element that is attached to the anchor would overcome the rejections based on U.S. Patent No. 5,009,229 to Grandjean. The Examiner also indicated that claims 43 and 50, which recite the distal end of the tension element attached to the anchor, also were allowable over Grandjean.

Obviousness-Type Double Patenting Rejections

The Office Action provisionally rejected claims 18, 19, 21, 22, 24, 25, and 31-50 on the grounds of obviousness-type double patenting over claims 1-21, 23, and 34 of U.S. Patent Application No. 10/971,549 (“the ‘549 application”) and claims 18, 19, 21, 22, 24, 25, and 31-50 over claims 1-24 of U.S. Appln. Serial No. 10/972,298 (“the ‘298 application”). As this obviousness-type double patenting rejection is the only rejection remaining in the present application, the Applicant respectfully requests that the Examiner withdraw this rejection, as the present application was filed earlier than both the ‘549 application and the ‘298 application.

35 U.S.C. § 112 Rejections

The Office Action rejected claims 18, 19, 21, 22, 24, 25, 31, and 33-42 as indefinite under 35 U.S.C. § 112, second paragraph, on the grounds that it was unclear whether both the proximal end and the distal end are attached to the anchor, or if only the distal end is attached to the anchor. By this response, claim 18 is amended to clarify that it is the “distal

end” of the tension element that is attached to the anchor. Claims 19, 21, 22, 24, 25, 31, and 33-42 depend from claim 18. The Applicant requests the withdrawal of this rejection and the allowance of claims 18, 19, 21, 22, 24, 25, 31, and 33-42.

35 U.S.C. §§ 102 and 103 Rejections

The Office Action rejected claims 18, 22, 32, 33, 35, 36, 43, 44, 46, 47, and 50 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,009,229 to Grandjean et al.

Independent claims 18, 43, and 50 recite “the electrode and tension element are configured such that the electrode can be threaded over the proximal end of the tension element and slideably advanced over the tension element towards the anchor during implantation” and that it is the “distal end” of the tension element the is “attached to the anchor.” Grandjean does not teach or suggest that the electrode 114 or 124 disclosed in “can be threaded over the proximal end” of strand 120 “during implantation.” (*See* 4:4-11; FIG. 6.) Given the configuration of the connector 102, the electrode 114, 124, the sheaths 108, 114, and the suture sleeve 110 (FIGS. 2, 3), the electrode 114, 124 is incapable of being threaded over the proximal end of the strand 120 during implantation, resulting in a structural difference between the claimed invention and the apparatus disclosed in Grandjean. Thus, independent claims 18, 43, and 50, and dependent claims 22, 32, 33, 35, 36, 44, 46, and 47 are not anticipated by U.S. Patent No. 5,009,229. The Applicant respectfully requests the withdrawal of this rejection and the allowance of claims 18, 22, 32, 33, 35, 36, 43, 44, 46, and 47.

The Office Action rejected claims 38 and 48 under 35 U.S.C. § 103(a) over Grandjean in view of Official Notice. Claims 39, 40, and 49 were rejected over Grandjean in view of U.S. Patent No. 3,244,174. These references do not remedy the deficiencies of Grandjean at least in that neither reference teaches or suggests an “electrode and tension element” which “are configured such that the electrode can be threaded over the proximal end of the tension element and slideably advanced over the tension element towards the anchor during implantation” where the distal end of the tension element is “attached to the anchor.” Claims 38, 39, and 40 therefore are patentable at least for the reasons presented

with respect to claim 18. Claims 48 and 49 depend from claim 43 and are patentable for at least the reasons presented with respect to claims 43. The Applicant respectfully requests the withdrawal of this rejection and the allowance of claims 38, 39, 40, 48, and 49.

In conclusion, the Applicant respectfully requests the allowance of all pending claims in this application. The Applicant invites the Examiner to contact the undersigned at the number listed below with any remaining questions.

Respectfully submitted,

FAEGRE & BENSON LLP

By: /Jason R. Kraus/
Jason R. Kraus, Reg. No. 42,765
612-766-7436
Customer No.: 42074

Dated: April 23, 2008
fb.us.2654521.04